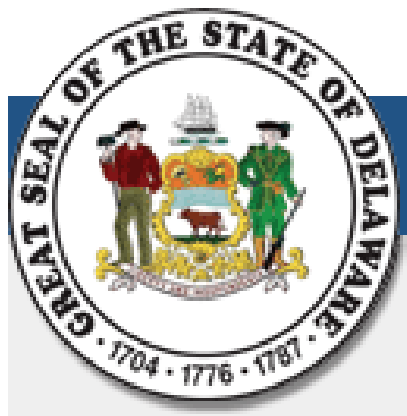


STATE OF DELAWARE



Department of Labor

Request for Proposals for Ratepayer Advocate

RFP# LGL 1402

RFP Closing: August 11, 2014; 3:00 p.m. EDT

REQUEST FOR PROPOSALS FOR RATEPAYER ADVOCATE ISSUED BY THE DELAWARE DEPARTMENT OF LABOR

1.0 OVERVIEW

Pursuant to 18 *Del. C.* § 2610(e-g), and on behalf of the Workers' Compensation Oversight Panel ("the WCOP"), with the consent of the Attorney General the Delaware Department of Labor ("DDOL") seeks to engage a member of the Delaware Bar to serve as Ratepayer Advocate who shall represent the interests of Delaware workers' compensation ratepayers in connection with the filing of an application by a workers' compensate advisory organization ("WCAO") with the Commissioner relating to rates or prospective loss costs throughout the course of the application (including any amendments thereto) and any appeals.

RFP SCHEDULE

ID	Date/Time	Activity
1	July 28, 2014	Request for Proposals issued, posted on the State's Government Support Services Website, the Attorney General's Department of Justice Website, and the Delaware State Bar Association Listserv
2	July 30, 2014	All Vendor questions regarding RFP due
3	August 1, 2014	The DDOL issues answers to questions regarding RFP via the Attorney General's website at http://attorneygeneral.delaware.gov and the State of Delaware's Bid Solicitation Directory at http://bids.delaware.gov
4	Monday, August 11, 2014 3:00 p.m. EDT	RFP Response due date ("Closing Date")
5	August 18, 2014	Begin vendor interviews (subject to change)
6	August 20, 2014	Begin negotiations (subject to change)
7	August 22, 2014	Contract awarded (subject to change)

The DDOL anticipates that, after conducting interviews, it will select a member of the Delaware Bar ("Vendor") to serve as Ratepayer Advocate pursuant to 18 *Del.C.* §§2610(e-g) and applicable regulations (whether under consideration or finally adopted). This RFP will define the scope of the work to be performed, the requirements the Vendor must address, the method for response, and the administrative requirements that must be followed. The DDOL reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

All interested attorneys or firms should submit an original, five (5) bound copies of their proposals ("Proposal"), as well as two (2) electronic copies on CD to the contact person. Proposals may be mailed or hand-delivered for receipt no later than 3:00 p.m. EDT on August 11, 2014 ("Closing Date"). A copy of the Proposal shall be delivered by electronic mail to the contact person at the email address provided below at the same time the paper copies are

provided. All timely Proposals become the property of the DDOL. Requests for extensions of the Closing Date will not be granted. Any Proposal, request for modification, or request for withdrawal received after 3:00 p.m. on the Closing Date is late and may not be considered. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), U.S. Mail, or by hand. Proposals shall be submitted to:

Delaware Office of Workers' Compensation
4425 N. Market St., 3rd Floor
Wilmington, DE 19802
Attn: Donna Forrest
Email: Donna.Forrest@state.de.us

Each Proposal must be accompanied by a transmittal letter, which briefly summarizes the proposing attorney or firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP, which the applicant may have taken in presenting the Proposal. DDOL reserves the right to deny any and all exceptions taken to the RFP requirements.

The cost of preparing Proposals will be borne solely by the offerors. Proposals shall address all the questions posed by the DDOL in the order in which they appear in this request.

RFP Designated Contact:

Delaware Office of Workers' Compensation
4425 N. Market St., 3rd Floor
Wilmington, DE 19802
Attn: Donna Forrest
Email: Donna.Forrest@state.de.us

All questions submitted, along with answers will be consolidated into a single Q&A document. The source of the questions will not be disclosed in the document. The Q&A document will be posted on the State of Delaware Bid Solicitation Directory at <http://bids.delaware.gov/>.

1.1 Delaware Department of Labor Profile

The Delaware Department of Labor serves the entire State of Delaware, which encompasses 1,955 square miles, with a diverse population of approximately 900,000 residents. The DDOL has four divisions: Division of Industrial Affairs, Division of Unemployment Insurance, Division of Employment and Training and Division of Vocational Rehabilitation. With an annual budget of \$77.9 million, the DDOL employs 479 full time employees.

1.2 Office of Workers' Compensation Profile

The mission of the Office of Workers' Compensation is:

RFP: Request for Proposals for Ratepayer Advocate

To foster, promote and develop the welfare of the wage earners of the State of Delaware, to improve their working conditions and to advance their opportunities for profitable employment by:

- *promoting economic stability to injured workers and their families by providing partial income maintenance; protecting workers from unfair and/or unsafe working conditions through the enforcement of labor standards laws, civil rights laws and apprenticeship laws; and*
- *ensuring safe and healthy working conditions by identifying workplace hazards and collecting statistical data relating to workplace injuries, illnesses and fatalities.*

2.0 SCOPE OF SERVICES

This RFP seeks to retain the services of a Ratepayer Advocate to represent the interests of Delaware workers compensation rate-payers in connection with the filing of an application by the WCAO with respect to rates or prospective loss cost, in accordance with 18 *Del.C.* Ch. 26 (as recently amended by HB 373) and applicable regulations promulgated by the DDOL pursuant to 18 *Del.C.* §2610(f) (either adopted or under consideration). The position of Ratepayer Advocate was created by legislation adopted as of July 15, 2014.

2.1 Ratepayer Advocate Costs

The cost of the Ratepayer Advocate shall be borne by the WCAO. The Ratepayer Advocate shall be entitled to charge a reasonable hourly rate acceptable to the Secretary of Labor and the Attorney General, and to be reimbursed for reasonable expenses. Regardless of the approved hourly rate, the total amount charged by the Ratepayer Advocate for fees and expenses, during the course of the application (including any amendments thereto) and any appeals, shall be limited to \$40,000. The Ratepayer Advocate shall submit a statement or statements for fees and expenses to the Commissioner, who shall forward each statement to the WCAO for payment.

2.2 Ratepayer Advocate Actuary

It is expected that the WCAO will submit a filing on or about August 15, 2014, and any hearing on the filing will be held October 2014. Pursuant to HB373, Section 1, “The ratepayer advocate shall select an actuary to work with him or her and testify in the rate-setting proceeding outlined in subsections (e) and (f) of this section. The cost of this actuary shall be borne by the advisory organization.” The selected actuary shall be an Associate or Fellow of the Casualty Actuarial Society, and shall have met the qualification standards of the American Academy of Actuaries for issuing a statement of opinion concerning workers compensation insurance. The actuary shall prepare a written report and statement of opinion evaluating the filing, which shall include a calculation of the appropriate increase or decrease in residual market rates and voluntary market loss costs and supporting analysis (“Report”). The Ratepayer Advocate must be prepared to promptly retain a qualified actuary, and both the Ratepayer

Advocate and the selected actuary must meet tight deadlines in connection with the ratemaking process.

2.3 Prospective Loss Costs Report

Pursuant to HB 373, Section 3 (enacted July 15, 2014) (the “Act”), the WCAO “shall, within 90 days after enactment of this act [*i.e.* no later than October 13, 2014], file for approval by the Commissioner prospective loss costs that shall explicitly and individually account for the impact of any statutory changes in this Act. Any order issued by the Department of Insurance relating to said filing shall explicitly account for all statutory changes that are enumerated by the advisory organization in the filing required by this section [Section 3].” The Ratepayer Advocate shall provide a complete copy of the Report to the Secretary of Labor, Insurance Commissioner, the Workers’ Compensation Oversight Panel, the WCAO, and any other party upon receipt of the Report from the actuary.

3.0 MINIMUM REQUIRED QUALIFICATIONS

3.1 Experience and Reputation

- A. The Vendor shall, at a minimum, (1) be a member of the Delaware Bar in good standing; (2) have significant experience in matters related to insurance company regulation; (3) preferably have experience in insurance rate proceedings; and (4) comply with the Delaware Lawyers Rules of Professional Conduct guidelines on conflicts of interest with regard to the proposed representation.
- B. If the Vendor is a law firm, it must designate a member of the firm, having the qualifications set forth in section 3.1(A), who will serve as the Ratepayer Advocate.

3.2 Professional Liability Insurance

The Vendor shall agree to maintain in full force and effect during the term of the Contract professional liability insurance in an aggregate amount of not less than \$2 million. In order to satisfy this requirement, the Vendor must:

- A. Include a statement in its Proposal affirmatively responding to this requirement; and
- B. Include in its Proposal either:
 - 1. A certificate of insurance or letter from its insurer demonstrating that the Vendor meets this requirement, or

2. A commitment letter or other evidence, satisfactory to the Procurement Officer, that Vendor will have such coverage as of the date the Contract commences.

3.3 Vendor's Capacity

The Vendor must demonstrate the capacity to perform the type of services needed by the DDOL described in Section 2.0 above. The Vendor must be available at all times to render services required under the Contract.

4.0 TECHNICAL PROPOSAL FORMAT

The following information shall be provided in each Proposal in the order listed below. A Vendor is expected to provide a response for each requirement listed in this RFP. Failure to respond to any request for information within this Proposal may result in rejection of the Proposal at the sole discretion of the DDOL.

4.01 General

All technical Proposals shall be prepared with a concise description of the Vendor's capabilities to satisfy the minimum qualifications of Section 3.0 above and the information requested under Section 4.02 below. Vendors should organize their Proposals so that their responses correspond to the specific subsections to the extent possible without unnecessary repetition.

4.02 Required Information

The Proposal shall contain the information described below.

A. Vendor's Prior Experience

1. General Information:

- (i) Within the past three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the future? Please describe.
- (ii) Has your firm or an attorney in your firm's employ ever been disciplined or censured by any regulatory body? If so, describe the principal facts.
- (iii) Within the last five years, has your firm, or a partner or attorney in your firm, been involved in litigation or other

legal proceedings relating to provision of legal services? If so, provide an explanation and indicate the current status or disposition.

- (iv) Please describe your firm's backup procedures in the event the Ratepayer Advocate leaves the firm.

2. Insurance Experience:

- (i) Provide a detailed description of the Vendor's experience in matters related to administrative law, insurance law, insurance company regulation, and insurance rate proceedings during the last five (5) years, including any involvement with issues relating to administrative law issues.
- (ii) Describe the Vendor's experience in the last five (5) years representing or advising public sector clients in administrative law issues.
- (iii) Provide a brief description of areas of the law related to the purpose of this RFP in which the Vendor has an expertise, including, but not limited to insurance law and administrative law.
- (iv) Please describe how the Vendor will be prepared promptly to retain an actuary, and with the actuary, meet tight deadlines in connection with the ratemaking process.

B. Conflicts of Interest.

- 1. In general. If a conflict of interest arises, the Vendor should be willing to continue to serve as Ratepayer Advocate and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The DDOL and Attorney General may entertain a request for a waiver of a Vendor's representation of a party in litigation involving a unit of State government other than the DDOL, but does not expect to waive any other conflicts. The DDOL reserves the right, in its sole discretion, to select another approved law firm to work on a particular matter if a conflict is not resolved to its satisfaction.

Each Vendor shall identify any conflicts of interest which may arise if the Vendor serves as Ratepayer Advocate and shall describe in its Proposal how it proposes to deal with such conflicts. Such conflicts may arise not only from the Ratepayer Advocate but

also from other matters involving any member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

5.0 PRICE PROPOSAL FORMAT

5.01 Billing Rates

- A. Current billing rates for the Ratepayer Advocate, and all attorneys who may assist the Ratepayer Advocate pursuant to this RFP and any applicable discounts;
- B. Current billing rates for all para-professionals who may assist the Ratepayer Advocate pursuant to this RFP and any applicable discounts;
- C. Confirmation that regardless of the approved hourly rate, the total amount charged by the Ratepayer Advocate for fees and expenses, throughout the entire course of the application (including any amendments thereto) and any appeals, shall be limited to \$40,000.
- D. No compensation will be permitted for the services of law clerks and law school graduates not admitted to practice.

5.02 Alternative Pricing Proposals

Although each Vendor is required to submit a price proposal containing the information set forth in Part 5.01, the DDOL will also accept proposals for alternative billing arrangements, which enhance the value and efficiency of the services to be provided, while complying with the overall \$40,000 ceiling for representation throughout the entire course of the application (including any amendments thereto) and any appeals. The Vendor may submit a statement, not more than one page in length, with respect to any alternative pricing proposal.

6.0 EVALUATION OF PROPOSALS

The selection committee shall evaluate the Proposals. During the evaluation process the selection committee may, at its discretion, request any or all Vendors to make oral presentations or participate in a formal interview. Such presentation or interviews will provide Vendors with an opportunity to answer questions about a Vendor's Proposal. Not all Vendors may be asked to make an oral presentation or to attend an interview.

6.01 Selection Criteria

The selection of the Vendor to provide legal services will be based on an evaluation of the Proposals to determine which Proposal reflects the best value, with technical factors generally being considered more important than cost of services, subject to the \$40,000 ceiling for representation throughout the entire course of the application (including any amendments

thereto) and any appeals. The selection of the Vendor to provide legal services will be based upon the following technical factors in descending order of importance.

- A. Experience of the Vendor in matters related to administrative law, insurance law, insurance company regulation, and insurance rate proceedings during the last five (5) years, including any involvement with issues relating to administrative law issues;
- B. Administrative structure of representation (i.e., proposed staffing assignments), soundness of approach to representation and understanding of the needs of the DDOL;
- C. Demonstrated ability to perform the services referred to under Project Scope and Objectives, including without limitation how the Vendor will be prepared promptly to retain an actuary, and with the actuary, meet tight deadlines in connection with the ratemaking process; and
- D. References and recommendations of other clients.

6.02 Contract Negotiation

The DDOL intends on opening negotiations with Vendors that the DDOL determines have a reasonable likelihood of being awarded a contract based on the Proposals that are submitted. Negotiations will focus on any technical weaknesses or deficiencies in Proposals as well as cost and pricing issues.

A written contract with the selected Vendor will be required. Each contract must be approved by the Attorney General pursuant to 18 *Del.C.* §2610.

6.03 Contract Award

The DDOL reserves the right to award all, part, or none of this contract. The DDOL intends to award a contract to one Vendor if deemed appropriate and desirable.